

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:24-cv-00025

Justin McMurtry,
Petitioner,

v.

Gregg County Sheriff,
Respondent.

ORDER


Petitioner Justin McMurtry, proceeding pro se, filed this application for the writ of habeas corpus complaining of the legality of his confinement pending criminal prosecution in the Gregg County Jail. The case was referred to United States Magistrate Judge K. Nicole Mitchell. Doc. 2.

On February 5, 2024, the magistrate judge ordered petitioner to pay the statutory \$5.00 filing fee or apply for leave to proceed *in forma pauperis*. Doc. 4. When petitioner did not comply, the magistrate judge issued a report recommending dismissal of the petition for failure to prosecute or to obey an order of the court. Doc. 5. The magistrate judge also observed that the online records of the Texas judiciary did not show that petitioner exhausted his state remedies as required before seeking federal habeas corpus relief. *Id.* at 2. The magistrate judge recommended dismissal on this basis as well. *Id.*

A copy of the magistrate judge's report was sent to petitioner at his last known address on March 13, 2024, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciene v. Sun Life Assurance Co. of Can.*, 931 F.3d 412, 420–21 (5th Cir. 2019).

When there have been no timely objections to a magistrate judge's report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). Having reviewed the magistrate judge's report, and being satisfied that it contains no clear error, the court accepts its findings and recommendation. Petitioner's action is dismissed without prejudice for failure to prosecute or to obey an order of the court, and for failure to exhaust state remedies.

So ordered by the court on July 29, 2024.



J. CAMPBELL BARKER
United States District Judge